

MOSER LAW FIRM, PC



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March 1, 2022

VIA ECF

Hon. Anne Y Shields, USMJ
United States District Court, EDNY
100 Federal Plaza
Central Islip, NY 11717

Re: *Barahona et. al. v. Paradise Tree Service & Landscape, Corp. et. al.*
Case No. 21-cv-05400 (GRB)(AYS)

Dear Judge Shields:

I represent the Plaintiffs in the above captioned FLSA matter. On January 27, 2022, the Court issued a docket order directing *inter alia* that the Defendants produce “[t]he time sheets or other time records and payroll records in the Defendant's possession, custody, or control that pertain to work the Plaintiff performed during the period for which the Plaintiff claims unpaid wages [as well as] the policies and practices on compensating workers performing the relevant type of work” on or before February 18, 2022. See Docket Order of 1/27/2022 (“docket order”) and ECF No. 9 (“scheduling order”). The Court also directed the Defendants to produce information regarding the FLSA income threshold on or before February 28, 2022 (within 30 days). *Id.*

On February 18, 2022, I emailed a reminder to Defendants’ counsel regarding the deadline for production of payroll records. The reminder was acknowledged, but no documents were provided. As of Friday, February 25, 2022, the Defendants had neither produced the records as directed by the Court nor indicated whether or not such records exist.

On February 25, 2022, I sent an email, left a voice message with defense counsel, and also sent a draft of this letter motion to defense counsel in a good faith effort to obtain compliance. No response was received.

Today I again called Defense counsel. He returned my phone call. When I informed him that that the income documents were due yesterday, and the payroll documents were due last week, he responded that he would “have to look into that” and asked when I would be furnishing him with documents. Finding this dialogue unproductive, I advised him that I would be filing a motion seeking compliance with the Court’s order.

Defense counsel then sent an email stating, in part, that “there is no such order as you falsely state in your letter” and advising that “[s]hould you file a motion, I will seek sanctions and costs for frivolous practice.”

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The current date for plaintiffs to respond to the Court's interrogatories is this Friday, March 4, 2022. In light of the Defendants' failure to either furnish payroll documents and documents concerning income as directed by the Court, I respectfully request an order:

1. Directing the Defendants to comply with the scheduling order and docket order by furnishing "[t]he time sheets or other time records and payroll records in the Defendant's possession, custody, or control that pertain to work the Plaintiff performed during the period for which the Plaintiff claims unpaid wages [as well as] the policies and practices on compensating workers performing the relevant type of work on or before March 7, 2022;
2. Directing the Defendants to Comply with the scheduling order and docket order by "produc[ing] to Plaintiff, tax returns and other information relevant to the issues discussed at the conference with respect to the threshold amount necessary for federal jurisdiction" on or before March 7, 2022;
3. Precluding the Defendant from offering such records either on a motion for summary judgment or at trial pursuant to FRCP 37(c)(1) for failure to comply with the Court's order; and
4. Extending the Plaintiffs' time to respond to the Court's interrogatories to March 14, 2022.

Respectfully submitted,

Steven J. Moser

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CC: All counsel of record via ECF